

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KARL JASON KLAIBER
3721 23rd Street, #1
San Francisco, CA 94114

Registered Nurse License No. 520588

Respondent

Case No. 2011-927

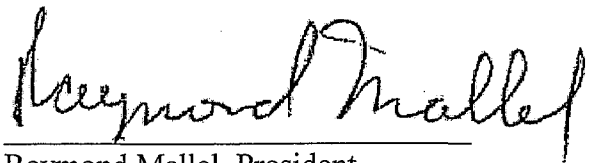
OAH No. 2012030024

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **December 27, 2012.**

IT IS SO ORDERED **November 27, 2012.**

A handwritten signature in black ink, appearing to read "Raymond Malle", written over a horizontal line.

Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 TIMOTHY J. McDONOUGH
Deputy Attorney General
4 State Bar No. 235850
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2011-927

12 **KARL JASON KLAIBER**
3721 23rd St., #1
13 San Francisco, CA 94114
Registered Nurse License No. 520588

OAH No. 2012030024
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14 Respondent.
15

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Interim Executive Officer of the
21 Board of Registered Nursing. She brought this action solely in her official capacity and is
22 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
23 Timothy J. McDonough, Deputy Attorney General.

24 2. Respondent Karl Jason Klaiber (Respondent) is represented in this proceeding by
25 attorney Robert F. Hahn, whose address is:

26 Law Offices of Gould & Hahn
2550 Ninth Street, Suite 101
27 Berkeley, CA 94710
28

3. On or about March 22, 1996, the Board of Registered Nursing issued Registered Nurse License No. 520588 to Karl Jason Klaiber (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2011-927 and expired on November 30, 2011.

JURISDICTION

4. Accusation No. 2011-927 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 16, 2011. Initially, Respondent failed to file a notice of defense within 15 days of the service of the Accusation and a default was taken against him on August 17, 2011. On or about August 18, 2011, Respondent filed his Notice of Defense contesting the Accusation. Respondent subsequently filed a motion to reconsider the Default Decision. On or about September 23, 2011, the Board granted reconsideration of the default decision and remanded the matter back to an Administrative Law Judge for a hearing.

5. A copy of Accusation No. 2011-927 is attached as exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2011-927. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

1 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
2 every right set forth above.

3 CULPABILITY

4 9. Respondent understands and agrees that the charges and allegations in Accusation
5 No. 2011-927, if proven at a hearing, constitute cause for imposing discipline upon his
6 Registered Nurse License.

7 10. For the purpose of resolving the Accusation without the expense and uncertainty of
8 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
9 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
10 those charges.

11 11. Respondent agrees that his Registered Nurse License is subject to discipline and he
12 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

13 RESERVATION

14 12. The admissions made by Respondent herein are only for the purposes of this
15 proceeding, or any other proceedings in which the Board of Registered Nursing or other
16 professional licensing agency is involved, and shall not be admissible in any other criminal or
17 civil proceeding.

18 CONTINGENCY

19 13. This stipulation shall be subject to approval by the Board of Registered Nursing.
20 Respondent understands and agrees that counsel for Complainant and the staff of the Board of
21 Registered Nursing may communicate directly with the Board regarding this stipulation and
22 settlement, without notice to or participation by Respondent or his counsel. By signing the
23 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
24 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
25 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
26 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
27 action between the parties, and the Board shall not be disqualified from further action by having
28 considered this matter.

14. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

16. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 520588 issued to Respondent Karl Jason Klaiber (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If Respondent is under criminal court orders, including

1 probation or parole, and the order is violated, this shall be deemed a violation of these probation
2 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

3 **2. Comply with the Board's Probation Program.** Respondent shall fully comply with
4 the conditions of the Probation Program established by the Board and cooperate with
5 representatives of the Board in its monitoring and investigation of the Respondent's compliance
6 with the Board's Probation Program. Respondent shall inform the Board in writing within no
7 more than 15 days of any address change and shall at all times maintain an active, current license
8 status with the Board, including during any period of suspension.

9 Upon successful completion of probation, Respondent's license shall be fully restored.

10 **3. Report in Person.** Respondent, during the period of probation, shall appear in
11 person at interviews/meetings as directed by the Board or its designated representatives.

12 **4. Residency, Practice, or Licensure Outside of State.** Periods of residency or
13 practice as a registered nurse outside of California shall not apply toward a reduction of this
14 probation time period. Respondent's probation is tolled, if and when he resides outside of
15 California. Respondent must provide written notice to the Board within 15 days of any change of
16 residency or practice outside the state, and within 30 days prior to re-establishing residency or
17 returning to practice in this state.

18 Respondent shall provide a list of all states and territories where he has ever been licensed
19 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
20 information regarding the status of each license and any changes in such license status during the
21 term of probation. Respondent shall inform the Board if he applies for or obtains a new nursing
22 license during the term of probation.

23 **5. Submit Written Reports.** Respondent, during the period of probation, shall submit
24 or cause to be submitted such written reports/declarations and verification of actions under
25 penalty of perjury, as required by the Board. These reports/declarations shall contain statements
26 relative to Respondent's compliance with all the conditions of the Board's Probation Program.
27 Respondent shall immediately execute all release of information forms as may be required by the
28 Board or its representatives.

1 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
2 state and territory in which he has a registered nurse license.

3 6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall
4 engage in the practice of registered nursing in California for a minimum of 24 hours per week for
5 6 consecutive months or as determined by the Board.

6 For purposes of compliance with the section, "engage in the practice of registered nursing"
7 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
8 non-direct patient care position that requires licensure as a registered nurse.

9 The Board may require that advanced practice nurses engage in advanced practice nursing
10 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

11 If Respondent has not complied with this condition during the probationary term, and
12 Respondent has presented sufficient documentation of his good faith efforts to comply with this
13 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
14 extension of Respondent's probation period up to one year without further hearing in order to
15 comply with this condition. During the one year extension, all original conditions of probation
16 shall apply.

17 7. **Employment Approval and Reporting Requirements.** Respondent shall obtain
18 prior approval from the Board before commencing or continuing any employment, paid or
19 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
20 performance evaluations and other employment related reports as a registered nurse upon request
21 of the Board.

22 Respondent shall provide a copy of this Decision to his employer and immediate
23 supervisors prior to commencement of any nursing or other health care related employment.

24 In addition to the above, Respondent shall notify the Board in writing within seventy-two
25 (72) hours after he obtains any nursing or other health care related employment. Respondent
26 shall notify the Board in writing within seventy-two (72) hours after he is terminated or separated,
27 regardless of cause, from any nursing, or other health care related employment with a full
28 explanation of the circumstances surrounding the termination or separation.

1 8. **Supervision.** Respondent shall obtain prior approval from the Board regarding
2 Respondent's level of supervision and/or collaboration before commencing or continuing any
3 employment as a registered nurse, or education and training that includes patient care.

4 Respondent shall practice only under the direct supervision of a registered nurse in good
5 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
6 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
7 approved.

8 Respondent's level of supervision and/or collaboration may include, but is not limited to the
9 following:

10 (a) Maximum - The individual providing supervision and/or collaboration is present in
11 the patient care area or in any other work setting at all times.

12 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
13 care unit or in any other work setting at least half the hours Respondent works.

14 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
15 person communication with Respondent at least twice during each shift worked.

16 (d) Home Health Care - If Respondent is approved to work in the home health care
17 setting, the individual providing supervision and/or collaboration shall have person-to-person
18 communication with Respondent as required by the Board each work day. Respondent shall
19 maintain telephone or other telecommunication contact with the individual providing supervision
20 and/or collaboration as required by the Board during each work day. The individual providing
21 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to
22 patients' homes visited by Respondent with or without Respondent present.

23 9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any
24 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,
25 or for an in-house nursing pool.

26 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
27 registered nursing supervision and other protections for home visits have been approved by the
28 Board. Respondent shall not work in any other registered nursing occupation where home visits

1 are required.

2 Respondent shall not work in any health care setting as a supervisor of registered nurses.
3 The Board may additionally restrict Respondent from supervising licensed vocational nurses
4 and/or unlicensed assistive personnel on a case-by-case basis.

5 Respondent shall not work as a faculty member in an approved school of nursing or as an
6 instructor in a Board approved continuing education program.

7 Respondent shall work only on a regularly assigned, identified and predetermined
8 worksite(s) and shall not work in a float capacity.

9 If Respondent is working or intends to work in excess of 40 hours per week, the Board may
10 request documentation to determine whether there should be restrictions on the hours of work.

11 10. **Complete a Nursing Course(s).** Respondent, at his own expense, shall enroll and
12 successfully complete a course(s) relevant to the practice of registered nursing no later than six
13 months prior to the end of his probationary term.

14 Respondent shall obtain prior approval from the Board before enrolling in the course(s).
15 Respondent shall submit to the Board the original transcripts or certificates of completion for the
16 above required course(s). The Board shall return the original documents to Respondent after
17 photocopying them for its records.

18 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with its
19 investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
20 amount of \$10,000. Respondent shall be permitted to pay these costs in a payment plan approved
21 by the Board, with payments to be completed no later than three months prior to the end of the
22 probation term.

23 If Respondent has not complied with this condition during the probationary term, and
24 Respondent has presented sufficient documentation of his good faith efforts to comply with this
25 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
26 extension of Respondent's probation period up to one year without further hearing in order to
27 comply with this condition. During the one year extension, all original conditions of probation
28 will apply.

1 **12. Violation of Probation.** If Respondent violates the conditions of his probation, the
2 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order
3 and impose the stayed discipline (revocation/suspension) of Respondent's license.

4 If during the period of probation, an accusation or petition to revoke probation has been
5 filed against Respondent's license or the Attorney General's Office has been requested to prepare
6 an accusation or petition to revoke probation against Respondent's license, the probationary
7 period shall automatically be extended and shall not expire until the accusation or petition has
8 been acted upon by the Board.

9 **13. License Surrender.** During Respondent's term of probation, if he ceases practicing
10 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,
11 Respondent may surrender his license to the Board. The Board reserves the right to evaluate
12 Respondent's request and to exercise its discretion whether to grant the request, or to take any
13 other action deemed appropriate and reasonable under the circumstances, without further hearing.
14 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be
15 subject to the conditions of probation.

16 Surrender of Respondent's license shall be considered a disciplinary action and shall
17 become a part of Respondent's license history with the Board. A registered nurse whose license
18 has been surrendered may petition the Board for reinstatement no sooner than the following
19 minimum periods from the effective date of the disciplinary decision:

20 (1) Two years for reinstatement of a license that was surrendered for any reason other
21 than a mental or physical illness; or

22 (2) One year for a license surrendered for a mental or physical illness.

23 **14. Physical Examination.** Within 45 days of the effective date of this Decision,
24 Respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician
25 assistant, who is approved by the Board before the assessment is performed, submit an
26 assessment of the Respondent's physical condition and capability to perform the duties of a
27 registered nurse, including a determination as set forth below in the condition titled "Rule-Out
28 Substance Abuse Assessment." Such an assessment shall be submitted in a format acceptable to

1 the Board. If medically determined, a recommended treatment program will be instituted and
2 followed by the Respondent with the physician, nurse practitioner, or physician assistant
3 providing written reports to the Board on forms provided by the Board.

4 If Respondent is determined to be unable to practice safely as a registered nurse, the
5 licensed physician, nurse practitioner, or physician assistant making this determination shall
6 immediately notify the Board and Respondent by telephone, and the Board shall request that the
7 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall
8 immediately cease practice and shall not resume practice until notified by the Board. During this
9 period of suspension, Respondent shall not engage in any practice for which a license issued by
10 the Board is required until the Board has notified Respondent that a medical determination
11 permits Respondent to resume practice. This period of suspension will not apply to the reduction
12 of this probationary time period.

13 If Respondent fails to have the above assessment submitted to the Board within the 45-day
14 requirement, Respondent shall immediately cease practice and shall not resume practice until
15 notified by the Board. This period of suspension will not apply to the reduction of this
16 probationary time period. The Board may waive or postpone this suspension only if significant,
17 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
18 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
19 Only one such waiver or extension may be permitted.

20 **15. Mental Health Examination.** Respondent shall, within 45 days of the effective date
21 of this Decision, have a mental health examination including psychological testing as appropriate
22 to determine her capability to perform the duties of a registered nurse, including a determination
23 as set forth below in the condition titled "Rule-Out Substance Abuse Assessment." The
24 examination will be performed by a psychiatrist, psychologist or other licensed mental health
25 practitioner approved by the Board. The examining mental health practitioner will submit a
26 written report of that assessment and recommendations to the Board. All costs are the
27 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
28 result of the mental health examination will be instituted and followed by Respondent.

1 If Respondent is determined to be unable to practice safely as a registered nurse, the
2 licensed mental health care practitioner making this determination shall immediately notify the
3 Board and Respondent by telephone, and the Board shall request that the Attorney General's
4 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
5 practice and may not resume practice until notified by the Board. During this period of
6 suspension, Respondent shall not engage in any practice for which a license issued by the Board
7 is required, until the Board has notified Respondent that a mental health determination permits
8 Respondent to resume practice. This period of suspension will not apply to the reduction of this
9 probationary time period.

10 If Respondent fails to have the above assessment submitted to the Board within the 45-day
11 requirement, Respondent shall immediately cease practice and shall not resume practice until
12 notified by the Board. This period of suspension will not apply to the reduction of this
13 probationary time period. The Board may waive or postpone this suspension only if significant,
14 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
15 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
16 Only one such waiver or extension may be permitted.

17 **16. Rule-Out Substance Abuse Assessment.** If the examiner conducting the physical
18 and/or mental health examination determines that the respondent is dependent upon drugs or
19 alcohol, or has had problems with drugs or alcohol (i.e. drug dependence in remission or alcohol
20 dependence in remission), that might reasonably affect the safe practice of nursing, then the
21 respondent must further comply with the following additional terms and conditions of probation:

22 **A. Participate in Treatment/Rehabilitation Program for Chemical**

23 **Dependence.** Respondent, at her expense, shall successfully complete during the
24 probationary period or shall have successfully completed prior to commencement
25 of probation a Board-approved treatment/rehabilitation program of at least six
26 months duration. As required, reports shall be submitted by the program on forms
27 provided by the Board. If Respondent has not completed a Board-approved
28 treatment/rehabilitation program prior to commencement of probation,

1 Respondent, within 45 days from the effective date of the decision, shall be
2 enrolled in a program. If a program is not successfully completed within the first
3 nine months of probation, the Board shall consider Respondent in violation of
4 probation.

5 Based on Board recommendation, each week Respondent shall be required
6 to attend at least one, but no more than five 12-step recovery meetings or
7 equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse
8 support group as approved and directed by the Board. If a nurse support group is
9 not available, an additional 12-step meeting or equivalent shall be added.

10 Respondent shall submit dated and signed documentation confirming such
11 attendance to the Board during the entire period of probation. Respondent shall
12 continue with the recovery plan recommended by the treatment/rehabilitation
13 program or a licensed mental health examiner and/or other ongoing recovery
14 groups.

15 **B. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent
16 shall completely abstain from the possession, injection or consumption by any
17 route of all controlled substances and all psychotropic (mood altering) drugs,
18 including alcohol, except when the same are ordered by a health care professional
19 legally authorized to do so as part of documented medical treatment. Respondent
20 shall have sent to the Board, in writing and within fourteen (14) days, by the
21 prescribing health professional, a report identifying the medication, dosage, the
22 date the medication was prescribed, the Respondent's prognosis, the date the
23 medication will no longer be required, and the effect on the recovery plan, if
24 appropriate.

25 Respondent shall identify for the Board a single physician, nurse
26 practitioner or physician assistant who shall be aware of Respondent's history of
27 substance abuse and will coordinate and monitor any prescriptions for Respondent
28 for dangerous drugs, controlled substances or mood-altering drugs. The

1 coordinating physician, nurse practitioner, or physician assistant shall report to the
2 Board on a quarterly basis Respondent's compliance with this condition. If any
3 substances considered addictive have been prescribed, the report shall identify a
4 program for the time limited use of any such substances.

5 The Board may require the single coordinating physician, nurse
6 practitioner, or physician assistant to be a specialist in addictive medicine, or to
7 consult with a specialist in addictive medicine.

8 C. **Submit to Tests and Samples.** Respondent, at his expense, shall
9 participate in a random, biological fluid testing or a drug screening program which
10 the Board approves. The length of time and frequency will be subject to approval
11 by the Board. Respondent is responsible for keeping the Board informed of
12 Respondent's current telephone number at all times. Respondent shall also ensure
13 that messages may be left at the telephone number when she is not available and
14 ensure that reports are submitted directly by the testing agency to the Board, as
15 directed. Any confirmed positive finding shall be reported immediately to the
16 Board by the program and Respondent shall be considered in violation of
17 probation.

18 In addition, Respondent, at any time during the period of probation, shall
19 fully cooperate with the Board or any of its representatives, and shall, when
20 requested, submit to such tests and samples as the Board or its representatives may
21 require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other
22 controlled substances.

23 If Respondent has a positive drug screen for any substance not legally
24 authorized and not reported to the coordinating physician, nurse practitioner, or
25 physician assistant, and the Board files a petition to revoke probation or an
26 accusation, the Board may suspend Respondent from practice pending the final
27 decision on the petition to revoke probation or the accusation. This period of
28 suspension will not apply to the reduction of this probationary time period.

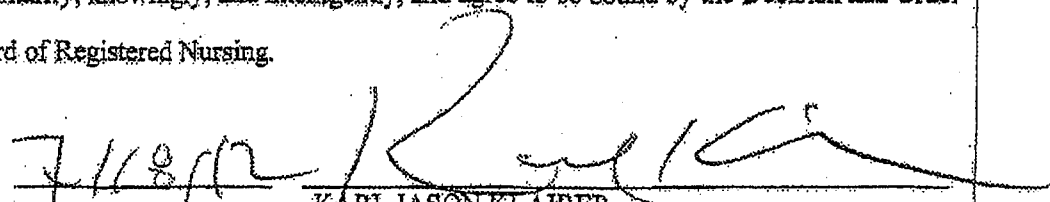
1 If Respondent fails to participate in a random, biological fluid testing or
2 drug screening program within the specified time frame, Respondent shall
3 immediately cease practice and shall not resume practice until notified by the
4 Board. After taking into account documented evidence of mitigation, if the Board
5 files a petition to revoke probation or an accusation, the Board may suspend
6 Respondent from practice pending the final decision on the petition to revoke
7 probation or the accusation. This period of suspension will not apply to the
8 reduction of this probationary time period.

9 D. Therapy or Counseling Program. Respondent, at his expense, shall
10 participate in an on-going counseling program until such time as the Board
11 releases her from this requirement and only upon the recommendation of the
12 counselor. Written progress reports from the counselor will be required at various
13 intervals.

14 ACCEPTANCE

15 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
16 discussed it with my attorney, Robert F. Hahn. I understand the stipulation and the effect it will
17 have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary
18 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
19 of the Board of Registered Nursing.

20
21 DATED: 7/18/12


22 KARL JASON KLAIBER
Respondent

23 I have read and fully discussed with Respondent Karl Jason Klaiber the terms and
24 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
25 I approve its form and content.

26 DATED: 7/19/12


27 Robert F. Hahn
Attorney for Respondent
28

ENDORSEMENT

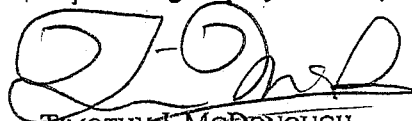
The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated:

7-19-2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General



~~TIMOTHY J. McDONOUGH~~
~~Deputy Attorney General~~
Attorneys for Complainant

SF2011900148
90253235.doc

Exhibit A

Accusation Case No. 2011-927

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 TIMOTHY J. McDONOUGH
Deputy Attorney General
4 State Bar No. 235850
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2134
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No.

2011-927

13 **KARL JASON KLAIBER**
2261 Market Street, #451
14 San Francisco, CA 94114
Registered Nurse License No. 520588

A C C U S A T I O N

Respondent.

15
16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about March 22, 1996, the Board of Registered Nursing issued Registered
23 Nurse License Number 520588 to Karl Jason Klaiber (Respondent). The Registered Nurse
24 License was in full force and effect at all times relevant to the charges brought in this Accusation
25 and will expire on November 30, 2011, unless renewed.

26 ///

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, in relevant part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in relevant part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

6. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

7. Section 2761 of the Code states, in relevant part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions."

8. Section 2762 of the Code states, in relevant part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

“(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

“(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.”

9. Section 4022 of the Code states:

“Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use in humans or animals, and includes the following:

“(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

“(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

“(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.”

DRUGS

10. **Diphenhydramine**, which is also known as Benadryl, is an antihistamine used to treat symptoms associated with allergies, the common cold, and the flu. It is a dangerous drug as designated by Business and Professions Code section 4022.

11. **Metoprolol** is used in the treatment of several diseases of the cardiovascular system, including hypertension. It is a dangerous drug as designated by Business and Professions Code section 4022.

12. **Tetanus/Diphtheria** injection is used to prevent tetanus and diphtheria infections. It is a dangerous drug as designated by Business and Professions Code section 4022.

13. **Zofran** is used to control nausea and vomiting that may be caused by surgery or by medicines used to treat cancer. It is a dangerous drug as designated by Business and Professions Code section 4022.

COST RECOVERY

14. Section 125.3 of the Code provides, in relevant part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE (Unprofessional Conduct) (Bus. & Prof. § 2761(a))

15. Respondent has subjected his Registered Nurse License to disciplinary action under Code section 2761, subdivision (a), in that he acted unprofessionally when he removed dangerous drugs from the Omnicell machine¹ at San Francisco General Hospital without a physician's order. The circumstances are as follows:

16. Between May 6, 2008 and July 16, 2008, on at least five occasions, Respondent removed dangerous drugs from the Omnicell machine without a physician's order. Specifically, Respondent removed, on the corresponding days, the following drugs:

a. On May 8, 2008, Respondent removed one 50 mg vial of Diphenhydramine.

b. On June 7, 2008 one 50 mg vial of Diphenhydramine and one .5 mg Tetanus/Diphtheria syringe.

c. On June 21, 2008, Respondent removed one 50 mg vial of Diphenhydramine and one 5 mg vial of Metoprolol.

d. On July 6, 2008, Respondent removed one 50 mg vial of Diphenhydramine and one 50 mg caplet of Diphenhydramine.

¹ An Omnicell machine is a drug dispensing machine. It is a secured system, in that, only authorized employees can access medications using a log-on name and password.

1 e. On July 16, 2008, Respondent removed one 50 mg vial of Diphenhydramine and one 5
2 mg vial of Metoprolol.

3 **SECOND CAUSE FOR DISCIPLINE**
4 **(Unprofessional Conduct—Illegally Possessing Dangerous Drugs)**
5 **(Bus. & Prof. § 2762(a))**

6 17. Respondent has subjected his Registered Nurse License to disciplinary action under
7 Code section 2762, subdivision (a), in that he illegally obtained and possessed dangerous drugs
8 on five separate occasions from May 6, 2008 though July 16, 2008. The drugs that Respondent
9 obtained without a physician's order and illegally possessed are explained in paragraph 16, above.

10 **THIRD CAUSE FOR DISCIPLINE**
11 **(Unprofessional Conduct)**
12 **(Bus. & Prof. § 2761(a))**

13 18. Respondent has subjected his Registered Nurse License to disciplinary action under
14 Code section 2761, subdivision (a), in that, on or about November 13, 2008, he acted
15 unprofessionally when he removed dangerous drugs from the operating room at Kaiser
16 Permanente Hospital in Sacramento (Kaiser). At that time Respondent was in his last semester of
17 the Nurse Anesthesia Program at Samuel Merritt University and was performing clinical work
18 under the supervision of a Preceptor Nurse,² Thomas Picarella (Picarella). The circumstances are
19 explained below.

20 19. On November 13, 2008, a Clinical Coordinator at Samuel Merritt University called
21 Picarella telling him that Respondent may have been accessing medications for his own use and
22 the caller requested that Picarella watch Respondent to see if he was inappropriately taking any
23 medications from the hospital. Later that same day, Respondent was assigned to work with
24 Picarella in Operating Room 6 to provide anesthesia for orthopedic/spine cases. In between one
25 of their cases, Picarella checked the top draw of the anesthesia cart where drugs are kept and he
26 noted that there were two unopened vials of Benadryl (Diphenhydramine). Picarella was the only
27 one in the room at the time. As Picarella left the room, Respondent entered the room.
28 Unbeknownst to Respondent, Picarella stayed outside the room and watched to make certain no

² A preceptor nurse is a mentor or supervisor who oversees a student who is working in a clinical setting.

one else entered the room or had access to the anesthesia cart. After a few minutes, Respondent left the room and Picarella returned to find that both vials of Benadryl were missing from the drug tray on the anesthesia cart. Picarella did not see anyone, other than Respondent, in the operating room between the time he saw and noted the two vials of Benadryl and when he returned to the operating room and discovered them missing.

FOURTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct—Illegally Possessing Dangerous Drugs)
(Bus. & Prof. § 2762(a))

20. Respondent has subjected his Registered Nurse License to disciplinary action under Code section 2762, subdivision (a), in that he illegally obtained and possessed dangerous drugs on November 13, 2008, while working at Kaiser Hospital in Sacramento. The circumstances involving Respondent's illegal possession of Benadryl (Diphenhydramine) is explained in paragraph 19, above.

FIFTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct—Illegally Possessing Dangerous Drugs)
(Bus. & Prof. § 2762(b))

21. Respondent has subjected his Registered Nurse License to disciplinary action under Code section 2762, subdivision (b), in that he administered to himself a dangerous drug without a prescription. On December 15, 2010, during an interview with Senior Investigator Kevin Dutchover, Respondent admitted that he injected himself with Zofran which he had gotten from a friend. Respondent admitted that he did not have a prescription for this medication.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 520588, issued to Karl Jason Klaiber;

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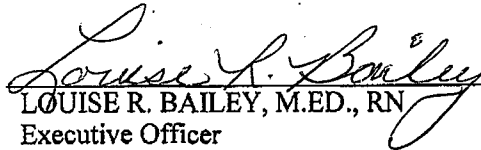
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1 2. Ordering Karl Jason Klaiber to pay the Board of Registered Nursing the reasonable
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions
3 Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.
5
6

7 DATED: _____

5/16/11


LOUISE R. BAILEY, M.ED., RN

Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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